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MATERIALIZING CITIZENSHIP: FINANCE IN A PRODUCERS' REPUBLIC

Robert Hockett*

ABSTRACT

Professor Hockett finds that Professor Baradaran's helpful new article is, in effect, largely about the institutional consequences of abandoning the once-dominant view of finance as the means by which to secure individual initiative and productive autonomy in our polity. Professor Hockett argues that a tight link exists between how we configure and conduct our enterprise and how we configure and conduct our finance. He argues further that we cannot fully describe what an optimally inclusive and sustainable banking and broader financial system would look like without also identifying an optimally participatory productive culture and attendant mode of capital accumulation.

INTRODUCTION

"[B]anks . . . enable honest and industrious men, of small or perhaps of no capital to undertake and prosecute business, with advantage to themselves and to the community"

—A. Hamilton¹

"Dependence begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition."

—T. Jefferson²

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¹ Alexander Hamilton, *Report on a National Bank*, in ALEXANDER HAMILTON: WRITINGS 575, 585 (2001); see also *id.* at 599 ("[A] Bank is not a mere matter of private property, but a political machine of the greatest importance to the State.").

² See Thomas Jefferson, *Notes on the State of Virginia*, in THOMAS JEFFERSON: WRITINGS 123, 290–91 (1984). Note that "ambition" in the present context is a pejorative term, pertaining to persons with antirepublican, tyrannical designs. See sources cited *infra* note 3.

I. TWO FALLS FROM REPUBLICAN GRACE

The two epigrams with which I open this Essay reflect a rare convergence of view between two notoriously antagonistic American founders, whose ambitions for their new nation's future are often observed to have been antithetical.³ What the two statesmen shared, notwithstanding their differences, was a view of the place of individual initiative and productive autonomy in an enduring republic, and of the place of finance in assuring that both remain ever available, on equitable terms, to productive republican citizens. Mehra Baradaran's helpful new article is, in effect, largely about the institutional consequences of our having lost sight of this once-dominant view of the role of finance in our polity.⁴ Yet it is also, I believe, for that very reason in part about how we've lost sight of the centrality of both work and productive autonomy to citizenship itself in what once was, and can once again be, our productive republic.⁵

Let me begin with an illustrative personal anecdote.⁶ During the late 1990s, I was writing a dissertation on the effects of a shifting global division of labor on American income, asset accumulation, and home-owning patterns. While writing, ironically, I began noticing large numbers of homeless adults in my city. Soon I began to engage with these folk on a more or less superficial but nonetheless day-to-day basis. After some weeks of this, it began to strike me as

³ For more on these visions and why they are ultimately best viewed as mutually supportive, see Robert Hockett, *A Jeffersonian Republic by Hamiltonian Means: Values, Constraints, and Finance in the Design of a Comprehensive and Contemporary American "Ownership Society"*, 79 S. CAL. L. REV. 45, 49–55 (2005) [hereinafter Hockett, *Jeffersonian Republic*]; Robert Hockett, *What Kinds of Stock Ownership Plans Should There Be? Of ESOPs, Other SOPs, and "Ownership Societies"*, 92 CORNELL L. REV. 865, 868 (2007) [hereinafter Hockett, *Stock Ownership Plans*]; and Robert Hockett, *Whose Ownership? Which Society?*, 27 CARDOZO L. REV. 1, 3 (2005) [hereinafter Hockett, *Whose Ownership?*].

⁴ See Mehra Baradaran, *How the Poor Got Cut Out of Banking*, 62 EMORY L.J. 483, 486–87 (2013), to which the present Essay is an appreciative invited response.

⁵ "Productive republic" and "producers' republic" figure as interchangeable terms of art in what follows. A producers' republic is a polity constituted by citizens who enjoy more or less equal material opportunity to engage in productive activity yielding sufficient remuneration as to enjoy rough material autonomy, which latter in turn enables them to participate meaningfully both in the governance of the polity itself and in productive decision-making within the firms through which they earn their livelihoods. In effect, then, a producers' republic melds participatory political democracy with a "partnership economy" of the sort that seems prerequisite to participatory political democracy itself. I contrast producers' republics with "banana" republics, which are feudal societies whose leaders falsely label them republics. Feudal societies, in turn, are societies in which ownership of productive resources is concentrated in very few hands, with everyone else dependent upon those owners for their livelihoods—in effect, serfs, peasants, sharecroppers, or their latterday equivalents.

⁶ For the fuller story, see Robert Hockett & Raymond Howze, *Chaka's Windows: Works and Days in the Life of a Homeless Entrepreneur* (2005) (unpublished manuscript) (on file with author).

odd that my dissertation-in-progress was in a sense about my new friends, on the one hand, while our chats remained chatty and dissertation-irrelevant on the other hand.

At length I decided to rectify the “disconnect.” I began spending days and evenings under the bridge where my homeless friends lived, camping there with them and in effect joining a tribe or big family. Many lessons emerged from this lengthy encounter, but two seemed especially important.

The first lesson was that most of my friends, though hardworking and clever, found contemporary patterns of wage-laboring and work/life separation intolerably alienating. They had accordingly come in effect to form a sort of working communion or “homeless kibbutz” that they both “owned” and “lived.”⁷ This was an organizational option not clearly open to them as off-the-rack business form prior to effectively stumbling into fashioning it themselves.

The second lesson was that my friends earned a fair bit of money through car washing but had no satisfactory means of saving it, hence of accumulating or productively investing it. There was accordingly little accumulation, little consolidation of gains, little building or growth on the part of my new friends’ old business. Things just continued—including my friends’ homeless status—in a suboptimal “holding pattern.”

My friends and I ended up taking two courses of action, each corresponding to one of the two mentioned “lessons.” The first was to start what we called a “shoebox bank.” My friends would first pop by my flat, which I maintained while living under the bridge so as to have an address and a shower. There they’d “deposit” spare cash into shoeboxes that bore their names, initial ledgers, which I would initial as well, then “withdraw” on an as-needed basis. In time, several of my friends saved enough money to pay union dues, with which they secured well-paying auto plant jobs.⁸ Two even returned to the blue-collar middle class.

The second course of action was to draft articles of partnership for those of my friends under the bridge who wanted to formalize the kibbutz-like arrangement I mentioned above. They planned to share a work space, an adjoining living space (donated on an inexpensive leasehold basis by a local

⁷ As one “lives” a particular “way of life.”

⁸ So much for the “kibbutz” preference, you might think in response. Yet these fellows regularly returned to the camp to rejoin their “family” for dinner and recreation in the evenings, sometimes even picking the squeegees back up and working a bit for old times’ sake.

church led by a remarkable pastor), ownership of their auto-detailing business, and all earnings. In putting this commune-*cum*-enterprise together, we brought my friends' world itself into more complete commerce with the wider world around them. We made of them stakeholders in the American prospect. We materialized, in this sense, their participation in our economy, hence in a manner their citizenship in our polity.

Now the first experiment is that with the most obvious purchase on the subjects discussed in Professor Baradaran's new article. For the tale of what made it *necessary* for a first-year law student and a group of his homeless friends to fashion a "bank" out of shoeboxes is effectively the tale that's now told in her important new study. For this very reason, however, the *second* experiment that I have mentioned *also* is critical to Professor Baradaran's story, and hence to the story of our nation's political-economic and consequent civic degradation in recent decades. And that is a story we must take to heart if proposals of the kind made by Professor Baradaran are to yield real fruit.

There is a very tight link, I shall argue, between how we configure and conduct our enterprise and how we configure and conduct our finance. We cannot fully describe what an optimally inclusive and sustainable banking and broader financial system would look like without also specifying what an optimally participatory productive culture and attendant mode of capital accumulation would look like. The steps pursuant to which we lost sight of the first—the steps culminating in the subject of Professor Baradaran's article—were accordingly likewise the steps pursuant to which we lost sight of the second. They were the increments by which we ceased being productive republicans, in the Founders' sense of "republic," and in so doing dematerialized citizenship while regressing toward neo-feudal productive and financial arrangements.

In what follows, then, I shall begin with the first fall from productive republican grace and Professor Baradaran's account of it—the departure from equal banking and credit opportunity among mutual owners of the sort that must underwrite equal productive opportunity among the same. Then I will turn to the second such fall—that from equal productive opportunity itself. My hope in so doing will be to draw out the sense in which both falls are one—hence to show that the proposals that Professor Baradaran makes at the end of her article are so important that they must ultimately be accompanied by more ambitious complements on the "real" side of our economy.

II. FROM BANKED TO BILKED: PRODUCTIVE REPUBLICAN VERSUS BANANA REPUBLICAN FINANCE

You might not know it were you to read the present back into the past, but the United States actually has a distinguished tradition of what I am calling “productive republican” finance. It is a tradition pursuant to which productive assets were deliberately spread broadly among diligent citizens ready to better the lives of themselves, their families, and ultimately their communities through thoughtful, hard work.

Historically, the tradition is rooted in two complementary sources: first, an implicitly opportunity-egalitarian, “productive yeoman” colonial culture and subsequent national self-image, stemming in large measure from the Civic Republican and Classical Liberal ideological origins of the American republic;⁹ and second, an attendant suspicion of large aggregations of financial capital, stemming ultimately not only from the inconsistency of such aggregations with equal opportunity and productive yeomanry themselves, but also from many of the Founders’ and their forebears’ personal experiences, as agronomists, with exploitative absentee London banking concerns across the Atlantic.¹⁰

The practical and legal consequences of this vision, where American banking and finance are concerned, were pronounced. Banking institutions were, by regulation, deliberately kept small and inherently local. The government routinely acted pursuant to policies and programs—in the form of access to resources, vocational education, and “start-up” funding—meant to channel productive opportunity to broad swathes of the (white male) population.¹¹ Such were among the underlying determinants of what has been called the “market revolution” in early nineteenth-century America.¹² They continued to operate via statutory restrictions on interstate banking and

⁹ See Hockett, *Jeffersonian Republic*, *supra* note 3, at 49–55; Hockett, *Whose Ownership?*, *supra* note 3, at 5–28; see also Hockett, *Stock Ownership Plans*, *supra* note 3, at 867–69, 880–85 (discussing the Civic Republican and Classical Liberal approaches to income independence and responsible investment in the context of modern securities ownership).

¹⁰ See, e.g., STANLEY ELKINS & ERIC MCKITRICK, *THE AGE OF FEDERALISM* 79–92 (1993); see also Hockett, *Jeffersonian Republic*, *supra* note 3, at 49–55; Hockett, *Whose Ownership?*, *supra* note 3, at 5–28.

¹¹ See, e.g., Hockett, *Jeffersonian Republic*, *supra* note 3, at 98–153; Hockett, *Stock Ownership Plans*, *supra* note 3, at 868–69; Hockett, *Whose Ownership?*, *supra* note 3, at 9–10.

¹² For more on this period, see generally, for example, CHARLES SELLERS, *THE MARKET REVOLUTION: JACKSONIAN AMERICA, 1815–1846* (1991). For a fascinating account of the domestic economic thought of the time, see generally PAUL K. CONKIN, *PROPHETS OF PROSPERITY: AMERICA’S FIRST POLITICAL ECONOMISTS* (1980).

branching that remained in place until well into the 1990s, as well as through community reinvestment norms and Progressive and New Deal-era government-sponsored mortgage-, educational-, and small business-financing innovations that worked very well till the same time.

What, then, occurred during the latter period to change things? What was so special about the mid-1990s and the years that led up to them?

A particular strength of Professor Baradaran's article is precisely its tracing the transformation back to the fateful 1970s and 1980s. Another such strength is its tracing the change through its salient manifestations in a particularly important institutional context, where productive republican finance is concerned—viz., the precincts of several distinctively American, mutually owned financial institution types whose nurturing regulatory regimes were eviscerated over the course of the two decades that came to a close at the turn of the last century.

The mutually owned institutions of what I call “democratic” or “productive republican” finance upon which Professor Baradaran concentrates are credit unions, savings and loans, and so-called “Morris Banks” and industrial loan companies. In all three cases, Professor Baradaran finds a shared historical development pattern. First comes cooperative invention in response to a broadly experienced necessity. Then comes a growth dialectic of mutually reinforcing (a) proliferation on the one hand, and (b) legislative notice, blessing, and prudential regulation on the other hand. Finally, once each of the institution types in question has by and large accomplished its mission of bringing the erstwhile non-well-to-do into the latterday “yeomanry”—the storied American “middle class”—it falls victim to its own success, on Professor Baradaran's telling, and there emerges a new dialectic of mutually reinforcing sharp competition and deregulation, culminating in decline and demutualization.

Where does this leave us, where finance for the non-well-to-do and the “working poor”—now, alas, a rapidly growing class—is concerned? In one sense, the answer lies in the story with which I began this Essay. It leaves us with sizeable numbers of folk like my bridge friends, whose only hope of participating in that would-be productive republic which we take ourselves ideally to constitute lies in the occasional amateur do-gooder ready to start up a “shoebox bank.” In another sense, the answer lies in the fuller phenomenology of exploitative check-cashing, payday-lending, and other fringe-banking

“services” whose operations and extent Professor Baradaran describes extensively in the first part of her article.¹³

In effect, then, the arc traced by Professor Baradaran’s article is that from a late nineteenth- and twentieth-century political economy in which some banking institutions serviced those who had already accumulated capital while more banking institutions serviced those in the process of building up capital, to a twenty-first-century political economy in which few of the latter institutions survive, while a multitude of fringe financial institutions prevent growing numbers of Americans from accumulating capital at all by exploiting their desperate straits. This doesn’t sound good. It sounds like banana-republican, not productive-republican, banking.¹⁴ But what can we do about it? The answer, I think, requires we first cast a glance at the “real” economy counterpart to the “banking” economy story that’s told so ably by Professor Baradaran.

III. FROM TRADESMEN TO BONDSMEN: PRODUCTIVE-REPUBLICAN PROPRIETORSHIP VERSUS BANANA-REPUBLICAN “WAGE SLAVERY” AND UNEMPLOYMENT

As noted above, America’s productive-republican financial tradition had a real economy complement. That was the yeoman ideal of the largely autarkic, civically engaged, productive agrarian household. This ideal found expression in much more than bank-regulatory and broader finance-regulatory policy. Indeed, productive-republican finance-regulatory policy was very much the tail to American democratic development’s “dog.”

Early American property law abandoned British common law primogeniture precisely in order to ensure a broad ownership of the newly conquered continent’s most conspicuous resource—arable land.¹⁵ Subsequent late eighteenth- and early nineteenth-century federal legislation, most notably the Northwest Ordinance, had the same aim.¹⁶ Later still, the Homestead and Land Grant Acts of the second half of the nineteenth century, not to mention the Free Soil and Free Labor movements that pushed for them, reflected a national policy favoring a broad spread of productive assets—including vocationally relevant higher education in the Land Grant Act case—over a

¹³ See Baradaran, *supra* note 4, at 485–97.

¹⁴ See *supra* note 5 for a reminder of the meaning of this distinction.

¹⁵ See Hockett, *Jeffersonian Republic*, *supra* note 3, at 99–100.

¹⁶ See *id.* at 99–102; Hockett, *Whose Ownership?*, *supra* note 3, at 11–14.

population of industrious, civically engaged, and responsibly productive republican citizens.¹⁷ These enactments enjoyed at least one finance-regulatory counterpart, too: the National Bank Act of 1863.

As the productive and populational center of gravity of the nation shifted, over the course of the late nineteenth and early twentieth centuries, from rural agrarian to urban industrial and commercial, American economic and broader public policy for a time faltered over how best to adapt the productive republican ideal, which had presumed a largely agrarian economy since its inception in pre-imperial Rome, to the new circumstance.¹⁸ The difficulty found reflection in growing wealth disparities and labor pauperization during the so-called “Gilded Age” of the late nineteenth century. The Progressive movement that emerged in response to that age marked the first flowering of productive republicanism’s adaptation to industrialization and commercialization. The movement’s signal accomplishments were too numerous to enumerate here. But they included the development of those distinctively American financial institutions that figure into Professor Baradaran’s article, as well as the Federal Reserve Act of 1913.

Notwithstanding the gains made by the Progressives, pronounced income- and wealth-disparities, which are inherently market-destabilizing over time,¹⁹ continued to grow in America, albeit at a slower pace, until the years following the First World War. At that point they spiked, rendering the so-called “Roaring Twenties” the most financially volatile decade on record until the 2000s.²⁰ The upshot of these developments was the inflation of two classic debt-fueled asset price bubbles, one in real estate, the other in corporate equities, which both peaked and burst, respectively, in 1928–1929.²¹ The

¹⁷ See Hockett, *Jeffersonian Republic*, *supra* note 3, at 99–102; Hockett, *Whose Ownership?*, *supra* note 3, at 11–14. See generally CONKIN, *supra* note 12 (discussing how, in the mid-nineteenth century, congressional debates centered around economic issues); ERIC FONER, *FREE SOIL, FREE LABOR, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR* (1970) (explaining that the Republican response to poverty was to encourage migration westward through homestead acts); SEAN WILENTZ, *CHANTS DEMOCRATIC: NEW YORK CITY AND THE RISE OF THE AMERICAN WORKING CLASS, 1788–1850* (1984) (detailing the history of American capitalism, particularly the history of early industrialization in New York).

¹⁸ See Hockett, *Jeffersonian Republic*, *supra* note 3, at 102–04; Hockett, *Whose Ownership?*, *supra* note 3, at 13–15.

¹⁹ See Robert Hockett & Daniel Dillon, *Income Inequality and Market Fragility: Some Empirics in the Political Economy of Finance* 2-3 (Jan. 21, 2013) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2204710.

²⁰ See *id.* at 33–34; see also RICHARD VAGUE & ROBERT HOCKETT, *DEBT, DEFLATION, AND DEBACLE: OF PRIVATE DEBT WRITE-DOWN AND PUBLIC RECOVERY* 21 (2013), <http://www.interdependence.org/wp-content/uploads/2013/04/Debt-Deflation-and-Debacle-RV-and-RH1.pdf>.

²¹ See VAGUE & HOCKETT, *supra* note 20, at 9–10, 21.

ensuing Fisher-style debt-deflation, later named the “Great Depression,” brought a second wave of progressive legislation that built upon and consolidated the productive-republican gains made by the Progressives a generation before.²² Again there were finance-regulatory complements to these enactments during the New Deal era just as there had been in earlier eras—indeed, there were many.

What all of the New Deal enactments had in common was their building upon the Progressive Era’s accomplishments to foster the continuing development of an industrial-era counterpart to the primarily agrarian yeoman class of the previous century, and thereby carry the productive republican ideal into the modern era.²³ The primary focus in so doing was on the real economy prerequisites to that goal’s accomplishment—in particular, “living” wages and job security, widespread homeownership, and a robust social safety net—while a secondary but no less important focus was on regulating finance in a manner that kept it subservient to the needs of the productive republican real economy.²⁴

Following the Second World War, New Deal-era policies largely continued for another three decades. What, then, changed on the real economy side of the ledger during the 1970s, in such manner as could induce those changes to the financial economy side of the same noted above in the previous Part? What in the real economy, in other words, brought on the changes that Professor Baradaran describes in the banking economy? The answer comprises two mutually complementary components.

First, arms-race, space-race, and mounting Vietnam War expenditures during the 1960s, laid atop Johnson-era Great Society programs and the United States’ global role as consumer of last resort, placed ultimately unsustainable

²² See Hockett, *Jeffersonian Republic*, *supra* note 3, at 105–10. See generally MICHAEL HILTZIK, *THE NEW DEAL: A MODERN HISTORY* (2011) (discussing the factors contributing to the Great Depression and studying the development of the New Deal); WILLIAM E. LEUCHTENBURG, *FRANKLIN D. ROOSEVELT AND THE NEW DEAL, 1932–1940* (1963) (analyzing President Roosevelt’s contribution to the development of the New Deal).

²³ See in particular Hockett, *Jeffersonian Republic*, *supra* note 3, at 104–17 on this point.

²⁴ See Hockett, *Jeffersonian Republic*, *supra* note 3, at 105–10. Much of the work cited *supra*, note 3, and discussed *infra*, Part IV, is prompted by the thought that the Progressive movement’s and the New Deal’s accomplishment must be consummated by plans that supplement secure labor incomes with secure capital incomes for a much broader swathe of the population. That would make for a closer analogue to what land was until the late nineteenth century.

inflationary pressures upon the U.S. dollar.²⁵ Ensuing consumer price inflations served ultimately both (a) to undermine prudential bank regulations aimed at preventing interest rate competition and concomitant speculative investment behavior on the part of depository institutions and (b) to delegitimize the Keynesian underpinnings of progressive post–New Deal fiscal and monetary policies.²⁶ The latter in turn invited a backlash from “Monetarist” and yet more reactionary circles of economists and would-be policy advisors, as well as from conservative politicians ready to listen to them.²⁷

Second, mounting civil unrest in the form of protests against (a) the aforementioned arms race and Vietnam War activities and (b) ongoing racial injustice, in combination with the Democrat-sponsored Civil Rights Act of 1964, brought additional reactionary impetus, this time from conservative and racist quarters in the American South and elsewhere.²⁸ The Republican Party, never friendly after the nineteenth century to progressive economic policies in any event, successfully exploited this reaction, prizing many white southern voters away from the Democratic Party and thereby winning repeated national electoral victories, commencing with 1968.²⁹ That not only brought anti-Progressive politicians into office, but also opened the door to growing influence on the part of the aforementioned reactionary economists.³⁰

The upshot of these developments was profound and far reaching. Taxation grew steadily less progressive and social safety nets were drawn in over the ensuing decades.³¹ Collective bargaining rights came under threat first from Orwellianly named “right to work” statutes legislated in conservative states, then from the federal government itself as the Republican Party consolidated

²⁵ See Robert Hockett, *Bretton Woods 1.0: A Constructive Retrieval for Sustainable Finance*, 16 N.Y.U. J. LEGIS. & PUB. POL’Y 401, 412 (2013) [hereinafter Hockett, *Bretton Woods*]; see also VAGUE & HOCKETT, *supra* note 20, at 21; Robert Hockett, Daniel Alpert & Nouriel Roubini, *The Way Forward: Moving from the Post-bubble, Post-bust Economy to Renewed Growth and Competitiveness* 29 (Cornell Law Sch., Research Paper No. 12-01, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1987139; Hockett & Dillon, *supra* note 19 at 2–3.

²⁶ See, e.g., Robert Hockett, *A Fixer-Upper for Finance*, 87 WASH. U. L. REV. 1213, 1272–73 (2010).

²⁷ See Hockett, *Bretton Woods*, *supra* note 25, at 412.

²⁸ See John E. Roemer, *Ideology, Social Ethos, and the Financial Crisis*, 16 J. ETHICS 273, 280–81 (2012).

²⁹ See *id.* at 276–77. This was the vaunted “southern strategy” promoted by Kevin Phillips, then an aid to presidential candidate Richard M. Nixon. See *id.*

³⁰ See *id.* at 277.

³¹ See generally *id.* (discussing a fundamental shift in attitudes toward taxation and wealth distribution as a result of political acquiescence).

its gains during the Reagan era.³² Labor-protective legislation more generally lost momentum for the same reason, as well as in response to steadily expanding trade liberalization—first under the GATT, then under NAFTA, and ultimately under the WTO agreements. After nearly a century of steady gains in both income shares and working conditions, American labor suddenly found itself competing with a veritable global reserve army of underprotected, unprotected, and even prison labor abroad. Real wage and salary incomes accordingly ceased rising during the 1970s, while capital incomes at the top of the national distribution steadily increased their share, soon capturing nearly all gains in the national income.³³

The rise in capital's share of national income gains, combined with the inflation rates of the 1970s and early 1980s, induced further deregulation of financial institutions as well. Inflation rendered the real rate of interest on thrift and then bank deposits negative, leading growing numbers of depositors to place their savings in mutual funds, which were permitted to make riskier investments than depository institutions and offer correspondingly higher returns on "deposits," instead.³⁴ The growing constituency for these investment vehicles came in time to cite capital's growing share of the national income as a justification for allowing investment companies to offer more bank-like options, including mutual funds with check-writing privileges. The more bank-like these institutions became, the more urgent the lobbying by bona fide banks for permission to offer higher returns on deposits and make the riskier sorts of investments necessary to render them possible. Thus commenced the long march of financial deregulation that stretched from the late 1970s into the early years of the present century, a story whose consequences for non-well-to-do would-be thrift depositors Professor Baradaran's article narrates so well.

IV. THE TWO FALLS ARE ONE: BANANA LABOR, BANANA FINANCE, AND WHAT MUST BE DONE

In light of the foregoing, I am of course sympathetic to the proposals that Professor Baradaran makes at the end of her article, all of which involve public facilitation—and in one case outright public provision—of small-scale banking

³² For more on the history of right to work legislation, see generally, for example, Charles W. Baird, *Right to Work Before and After 14(b)*, 19 J. LAB. RES. 471 (1998).

³³ See Roemer, *supra* note 28, at 281; see also Hockett, Alpert & Roubini, *supra* note 25, at 3.

³⁴ For more on this history, see generally MATTHEW P. FINK, *THE RISE OF MUTUAL FUNDS: AN INSIDER'S VIEW* (2011).

for the less well-to-do.³⁵ I am skeptical, however, that much can be accomplished this way in the absence of serious counterpart action on the real side of the economy.

Small-scale community reinvestment, development banking, and microlending, as well as reenlisting the Postal Service as a savings outlet for the financially humble, are all *very* good ideas—particularly the latter, in my view.³⁶ In effect, they offer means of effecting more systematically and reliably, on a much larger scale and with no pretense or consequent expectation that they will be hugely profitable, that which the “shoebox bank” with which I opened this Essay accomplished. That is nothing to sneeze at, both because it can render what already are difficult lives appreciably less difficult, and because it can facilitate modest degrees of capital accumulation among at least some constituents—something which the remarkable Professor Michael Sherraden and colleagues have long shown to yield manifold benefits to beneficiaries and, in some cases, their families.³⁷

My only concern with proposals of this sort, then, is with the danger that they can raise false hopes, consequent disillusionment, and long-term complacency in the absence of real, productive republican reform on the real side of the economy. Utopian stories of Muhammed Yunus’s bringing his magic to Arkansas during the Clinton governorship, of South Shore Bank’s revitalizing South Side Chicago, and of the transformative “miracles” of compound interest and financial innovation, recall, were staples of the illusorily prosperous Clinton years.³⁸ It all looked, sounded, and felt very good till it turned out to be castles in air built on mountains of tax code- and regulator-encouraged, bubble-inflating private debt. Even the vaunted federal surpluses of the end of the era were but the public sector correlates of those steadily mounting private sector deficits. Meanwhile, real incomes, in contrast to unsustainably bubble-inflated stock market, then housing wealth, continued to stagnate.³⁹

³⁵ See Baradaran, *supra* note 4, at 533–47.

³⁶ See *id.* for Professor Baradaran’s elaboration of these suggestions.

³⁷ See, for example, Hockett, *A Jeffersonian Republic*, *supra* note 3, at 78 n.84, for more on the work of Professor Sherraden and colleagues.

³⁸ See Roemer, *supra* note 28, at 300, for more on this. For more on the period during which microlending was a “hot topic” in American policy circles, see, for example, Mark Shreiner & Jonathan Morduch, *Opportunities and Challenges for Microfinance in the United States*, in *REPLICATING MICROFINANCE IN THE UNITED STATES* 19–61 (James H. Carr & Zhong Yi Tong eds., 2002).

³⁹ Hockett, Alpert & Roubini, *supra* note 25, at 10.

We still have done nothing about that as a polity in over forty years now. Real wealth will not really grow, below the top of the distribution, until real incomes again grow below the top of the distribution. Asset accumulation programs will do little until there is something to accumulate. Banks for the people whose prospects concern Professor Baradaran and me—including the Occupy Money Cooperative on whose board I sit—will do little for their beneficiaries until they have something to save.

What, then, are we going to do? An excellent start—but only a start—would be both to adopt Professor Baradaran’s proposals and to begin reinstating, slowly but steadily, productive-republican policies of the kind referenced above in connection with the Progressive and New Deal movements. The nation must first act to write down the mortgage debt that continues to drag down growth and employment-inducing consumer expenditure.⁴⁰ It must also undertake a serious program of nationwide infrastructural renewal, employing idle labor and raising real wages in the process.⁴¹

In the longer term, the nation must renew and extend collective bargaining rights for labor—including retail, fast food, and service labor, which now represent a much larger part of the labor force than does manufacturing labor. It must also reintroduce seriously progressive income and, especially, estate taxation, using the proceeds to revitalize essential social safety nets and productive education at all levels. Meanwhile, where global economic relations are concerned, it must finally act to render continued liberal trading arrangements *contingent* upon *foreign* labor’s enjoyment of the same standards as *American* labor, and *foreign*-manufactured products’ being subject to the same quality standards as *American*-manufactured products.⁴²

⁴⁰ See *id.* at 18. See generally Robert Hockett, *It Takes a Village: Municipal Condemnation Proceedings and Public/Private Partnerships for Mortgage Loan Modification, Value Preservation, and Local Economic Recovery*, 18 STAN. J.L. BUS. & FIN. 121 (2012) (arguing that municipal governments should exercise their eminent domain powers to restore the mortgage markets); Robert Hockett, *Paying Paul and Robbing No One: An Eminent Domain Solution for Underwater Mortgage Debt*, in 19 CURRENT ISSUES ECON. & FIN., No. 5, 2013, at 1 (same).

⁴¹ See Hockett, Alpert & Roubini, *supra* note 25, at 5–6; see also Robert C. Hockett & Robert H. Frank, Public Infrastructure Investment, Renewed Economic Growth, and the U.S. Fiscal Position 2 (Cornell Law Sch., Research Paper No. 12-04, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1987656.

⁴² See Hockett, *Bretton Woods*, *supra* note 25, at 453–66; Hockett, Alpert & Roubini, *supra* note 25, at 28–29; cf. Robert Hockett, *Insource the Shareholding of Outsourced Employees: A Global Stock Ownership Plan*, 3 VA. L. & BUS. REV. 357 (2008) (proposing that, in response to the losses incurred from globalization, the nation should channel gains from globalization to outsourced employees).

In the still longer term, the nation must work to construct a global central-bank-like institution that supplies global liquidity in the form of a bona fide global currency not issued by any one nation as soon as possible; the alternative is continued overvaluation of the dollar relative to other currencies, with consequent depressive effects upon domestic production and employment.⁴³ It should also forthrightly embrace an employer-of-last-resort function for the federal government, enabling the latter to influence domestic wage rates through “open labor market operations” much as it influences domestic borrowing rates through open (Treasury) market operations.⁴⁴

Finally, the nation must begin developing asset-spreading programs that ultimately render as broad a segment of the population as possible able to derive income from capital sources even as it does so from labor sources.⁴⁵ The ultimate aim should be for each individual to replicate in her own income portfolio, so far as possible, the same source composition as characterizes the *national* income portfolio as a whole—an ideal that I call elsewhere the Income-Compositional Symmetry principle.⁴⁶ That will yield both optimal diversification, where individual income risk minimization is concerned, and automatic balancing, hence stabilizing, as between productive and absorptive capacity where the macroeconomy is concerned.⁴⁷ This was the ideal implicit in the nation’s land-spreading programs during the agrarian era. It must be updated to postagrarian conditions—not just in the form of home and higher education finance, but in the form of corporate share-spreading finance.

It should also be noted that none of the gains realized through these measures will be secure in the absence of sensible macro-prudential and consumer-protective *financial regulation*.⁴⁸ Wealth-destroying bubbles and busts must be preempted proactively, and preventing exploitation of non-financiers who derive increasing portions of their incomes from capital assets by sharp operators will become all the more urgent.

⁴³ See Hockett, *Bretton Woods*, *supra* note 25, at 466–81.

⁴⁴ See generally Robert C. Hockett & Saule T. Omarova, “Private” Means to “Public” Ends: *Governments as Market-Actors*, 15 THEORETICAL INQUIRIES L. 53 (2014) (encouraging governments to extend their roles by pursuing traditionally public ends through traditionally private means).

⁴⁵ For more on this ideal, see generally Hockett, *Stock Ownership Plans*, *supra* note 3; and Hockett, *Jeffersonian Republic*, *supra* note 3, at 124–42.

⁴⁶ See Robert Hockett, *A Republic of Owners: Jeffersonian Democracy, Hamiltonian Finance, and a Plan for Permanent Post-crisis American Renewal* (2014) (unpublished manuscript) (on file with author).

⁴⁷ See *id.*

⁴⁸ See generally Robert C. Hockett, *The Macroprudential Turn: From Institutional “Safety and Soundness” to Systemic “Financial Stability” in Financial Supervision*, 8 VA. L. & BUS. REV. (forthcoming 2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2206189.

It might well ultimately prove necessary to shrink and restrict the financial “services” industry to little more than prudential asset management on behalf of humble investors and quasi-public investment funds in which citizens diversify holdings. Certainly the secondary markets will become less crucial for purposes of lowering credit costs in the primary markets, as the general public and its legislators grow increasingly cognizant of the fact that credit is ultimately a public resource, rooted in the full faith and credit of the sovereign taxing authority and its central bank, that the public partners with private banking institutions in allocating. The limits on direct public provision of credit are few in a nation that issues its own currency, and there is ultimately no fundamental necessity that primary market credit outlets—banks—be privately, shareholder owned either.

CONCLUSION: BANKING ON SHAREHOLDER SOCIETIES, NOT SHARECROPPER SOCIETIES

The agenda just elaborated is obviously an ambitious one. I believe it is nevertheless a necessary one. With nearly eleven million American home mortgage loans still underwater and new household formation rates at twenty year lows,⁴⁹ with real wages and labor force participation rates still lingering at forty year lows,⁵⁰ and with GDP growth anemic even after five years of innovative Fed monetary policy, it is likely that growing numbers of Americans will be forced into straits like those of my friends mentioned at the beginning of this Essay for years, if not decades, to come. As the experience with those same friends suggests, progress can be made by ensuring that banking and other financial services are available to those in such straits. As the same experience also suggests, however, the ultimate utility of such services will remain inherently limited in the absence of broadly owned assets, well-compensated work, and associated incomes that can accumulate into wealth with the help of those services.

Professor Baradaran’s article is a crucial first step in thinking through what a recovery of finance for the now financially disenfranchised will look like. It is also an important contribution to our ongoing effort to understand how the disenfranchisement took place and, accordingly, how it might be both rectified and avoided in future. As I hope I’ve made clear, however, an essential complement to Professor Baradaran’s effort—indeed a *sine qua non* to its

⁴⁹ See sources cited *supra* note 40.

⁵⁰ See Hockett, Alpert & Roubini, *supra* note 25, at 7–9.

success—will be the set of its real economy counterparts laid out above. Just as my friends’ “shoebox” bank was conjoined to a “homeless kibbutz” that they *owned*, so will Professor Baradaran’s and others’—including my own—efforts to “rebank” the now under-banked have to be integrated with reemploying and reendowing the now un- and underendowed. To do both of these things in tandem will be to restore the productive republic we lost in the late twentieth century and to rematerialize citizenship therein. May that urgent effort, so well commenced by Professor Baradaran’s work, now kick into serious gear.